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SERVICE DATE – LATE RELEASE MAY 21, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-124 (Sub-No. 2)

WATERLOO RAILWAY COMPANY
– ADVERSE ABANDONMENT –
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND VAN BUREN
BRIDGE COMPANY IN AROOSTOOK COUNTY, ME

STB Docket No. AB-279 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY
– ADVERSE DISCONTINUANCE –
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND VAN BUREN
BRIDGE COMPANY IN AROOSTOOK COUNTY, ME

Decided: May 21, 2003

By motion filed on May 16, 2003, the Trustee of the Bangor & Aroostook Railroad Company (BAR), seeks a protective order under 49 CFR 1104.14 to govern the disclosure and use of confidential and commercially sensitive information in these proceedings. A proposed protective order and confidentiality undertaking were included with the motion. BAR states that the terms of the protective order have been accepted by the other parties to this proceeding, Canadian National Railway Company and Fraser Papers, Inc.

Confidentiality matters in this proceeding must be addressed in a way that is consistent with past practices in Board proceedings and with the agency's clarification of 49 CFR 1104.14(a) and 1104.3(b)(4), as provided in Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638 (STB served Apr. 3, 2003). Specifically, a public version must be filed with the Board simultaneously with any filing designated Highly Confidential or Confidential. When filing a Highly Confidential Version, the filing party does not need also to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a

Confidential Version¹ reviewable by any other party's in-house counsel or a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house counsel. Accordingly, we have modified the proposed protective order to make it conform to the requirements of STB Ex Parte No. 638.

The motion for a protective order will be granted, and the protective order and confidentiality undertakings will be adopted with the modification indicated above. The parties agree on the need for a protective order. The proposed order will facilitate the handling of any confidential or commercially sensitive information and ensure that such information is not released improperly.

It is ordered:

1. The motion for a protective order is granted, and the protective order and confidentiality undertakings in the Appendix to this decision are adopted.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ The Confidential Version may be provided to other parties in electronic format only.

APPENDIX
PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraphs 2 or 3 of this Protective Order, and any Confidential Information contained in such documents.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) in STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2), and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2) or from any related proceedings before the Board.

2. If any person or entity determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served by that person or entity in these Proceedings contains Confidential Information or consists of Confidential Documents, then that person or entity may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided for hereinafter.

3. Any person or entity producing material in discovery to a party to these Proceedings, or submitting material in pleadings or other documents filed or served in these Proceedings, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as

“HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided for hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Order.

6. Any person or entity may challenge the designation by any other person or entity of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

7. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

8. Any party who receives Designated Material in discovery shall destroy¹ such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to

¹ “Destroy” shall mean shredding of paper documents and destruction of computer-memory devices (e.g., floppy diskettes).

Protective Order.” See 49 CFR § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than the Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for a Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require that the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the person or entity producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

13. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any person or entity to disclose voluntarily any Confidential Information originated by that person or entity, or to disclose voluntarily any Confidential Documents originated by that person or entity, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other person or entity, unless that person or entity has consented in writing to the disclosure.

15. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board, whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be provided to other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

Exhibit A
UNDERTAKING — CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2) and related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2), any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that applicants or other persons or entities producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Exhibit B

UNDERTAKING — HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside counsel or an outside consultant for _____, for whom I am acting in these proceedings. I have read the Protective Order governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2) and related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2), any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Docket No. AB-279 (Sub-No. 3), STB Docket No. AB-124 (Sub-No. 2), and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that applicants or other persons or entities producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____